



A U S S D A

AUSTRIAN
SOCIAL SCIENCE
DATA ARCHIVE

INTELLECTUAL PROPERTY RIGHTS

Guideline for the AUSSDA Dataverse

"We make social science data accessible, creating opportunities for research and data re-use, benefitting science and society."

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Intellectual Property Rights: Guideline for the AUSSDA Dataverse

Purpose and Scope of this document

This is a guideline about IPR challenges for users who want to deposit and share data via the AUSSDA Dataverse. In general, the legal framework for Open Data is very broad, the applicable regulations depend on various factors and can be different for seemingly similar cases of datasets (depending e.g. on the content of the dataset, the data collection process, the characteristics of the data collection entity, the amount of data being collected, etc.). AUSSDA aims at providing a groundwork of information for depositors to consider when collecting, transferring and publishing data regarding intellectual property rights, focussing on copyright law.

Within the IPR framework, other laws and regulations may also apply, such as patent or trademark law. Outside of this legal framework, there are also legal restrictions that might prevent the lawful sharing or publishing of data (e.g. the terms of use of a database or web service the data originates from), but these are beyond the scope of this document.

Legal challenges

Legal restrictions when distributing or publishing data may arise from various sources of national law as well as European directives dealing with intellectual property. Most important for Open Data are copyright restrictions, including database rights.

In Austria, the most important legal source is the Austrian Copyright law ("Urheberrechtsgesetz").¹ A work is copyright protected when it is a peculiar intellectual creation in the fields of literature, music, visual arts and cinema. If research data fall under this protection is still controversial and depends on various factors.²

Copyright issues in the sharing and publishing of research data may arise in the reuse of copyright protected materials in part or in full, e.g. the inclusion of copyright protected press statements, social media posts, articles etc. Even if copyright protection is not applicable, it is still possible that databank rights will hinder the lawful sharing and publishing of research data. Special provisions for database works are regulated under §40 f UrhG. "Databases [...] are collections of works, data or other independent elements, arranged systematically or methodically and accessible individually by electronic means or otherwise." A special form of the use of databases for research with relevance for database rights is a practice called "webscraping" or "parsing".³

Liability and limitations by AUSSDA

AUSSDA does not provide legal advice to depositors or researchers, neither in general nor regarding intellectual property rights. AUSSDA does not inspect and check the documents and data submitted by the depositors for infringements, in particular infringements of intellectual property rights.

AUSSDA also does not have the means to provide individual assessments or provide legal protection regarding IPR infringement. AUSSDA strives to provide additional information to support data depositors as best as possible by providing a legal opinion for common issues as experienced by depositors and by referring to relevant sources on these topics.

In case IPR infringement is committed by publishing data via the AUSSDA Dataverse⁴, AUSSDA as an online content-sharing service provider is not liable, based on Article 17 (4) lit. c of the EU Directive

¹ Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz). BGBl. Nr. 111/1936.

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>.

² See: <https://www.forschung-und-lehre.de/wem-gehoren-forschungsdaten-1013/>

³ See: <https://www.forschung-und-lehre.de/recht/grenzen-des-web-scrappings-2421/>

⁴ <https://data.aussda.at/>

2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

Guideline for depositors in the AUSSDA Dataverse

In case AUSSDA receives sufficiently substantiated notice from right holders that unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter has happened, AUSSDA will immediately disable access to the notified works or other subject matter.

In case AUSSDA is notified of copyright or other IPR issues and disables access to data, AUSSDA will further notify the depositor of the data set in question. Possible further steps taken by the right holders concerned may include consequences such as an injunction or a penalty fee. Anyone who uses protected works without the (sufficient) rights beforehand is potentially exposed to legal consequences.

AUSSDA is not under the obligation to check the content of its data holdings for any IPR infringements. In case AUSSDA staff perceives any potential IPR issues, they will inform data depositors of such.